

REMARKS

Claims 1-5, 17-13 and 15-37 are Allowable

The Office has rejected claims 1-5, 17-13 and 15-73, at paragraph 4 of the Office Action, on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 10/654861. Applicant respectfully traverses the rejection. The office has failed to specifically show how the claims of the instant application are not patentably distinct from the earlier patent claims. In addition, both patents were filed on September 4, 2003. Therefore the statement that the “later patent/application claims [are] not patentably distinct from an earlier claim” does not apply and the nonstatutory obviousness-type double patenting rejection should be removed.

Claims 1-5, 7-13, and 15-37 are Allowable

The Office has rejected claims 1-5, 7-13, and 15-37 at paragraph 6 of the Office Action, under 35 U.S.C. §102(e), as being anticipated by U.S. Publication No. 2006/0098670 (“Voit”). Applicant respectfully traverses the rejection.

Voit does not disclose or suggest the specific combination of claims 1-5, 7-13, and 15-37. For example, Voit does not disclose configuring a system to automatically receive management information via a virtual connection from a data communication node as required by claims 1, 5, 11, 16, 26, and 33. In contrast, Voit discloses a system that must be initiated by a customer or technician. Once initiated, the system isolates and tests various segments of a network to determine why the network is adversely impacting the customer’s data services. Once that is completed, the system does not perform further monitoring until the system is initiated again. *See* Voit, page 17, paragraphs 171, 176, 177, and 179. Voit does not automatically receive management information and the system must be initiated by a customer or technician each time the network is to be analyzed. Thus, Voit does not disclose or suggest the specific combination of claims 1, 5, 11, 16, 26, and 33.

Claims 2-4 depend from claim 1, claims 7-10 depend from claim 5, claims 12-15 depend from claim 11, claims 17-25 depend from claim 16, claims 27-32 depend from claim 26, and claims 34-37 depend from claim 33. Applicant has shown that claims 1, 5, 11, 16, 26, and 33 are allowable and hence, Voit fails to disclose at least one element of each of the claims 2-4, 7-10, 12-15, 17-25, 27-32, and 34-37. Accordingly, claims 2-4, 7-10, 12-15, 17-25, 27-32, and 34-37 are also allowable, at least by virtue of their dependency from claims 1, 5, 11, 16, 26, and 33 respectively.

Further, the dependent claims recite additional features that are not disclosed by Voit. For example, claims 5, 11, 17, 27, and 33 each refer to automatically collecting information regarding a service level of a first network for carrying data traffic between a local area network and a wide area network. In contrast, the type of information obtained by the system disclosed in Voit is specific information related to poor performance experienced by a specific customer. *See* Voit, page 17, paragraph 176. The specific information includes route traffic information based on layers of the protocol stack that are carried by the layer 2 data link, information for the purpose of testing layers 3 through 7 connectivity, packet rate, and QoS. *See* Voit, page 17, paragraphs 174. Therefore, the information collected by the system disclosed in Voit does not disclose the service level of a first network and claims 5, 11, 17, 27, and 33 are allowable.

In addition, claims 30 and 33 are directed to using management information to differentiate between customer equipment failure and a service level agreement violation. In rejecting claims 30 and 33 the Office cites page 19, paragraph 205 of Voit. However, the cited portion of Voit does not disclose using the management information to differentiate between customer equipment failure and a service level agreement violation. Therefore, claims 30 and 33 are allowable.

CONCLUSION

Applicant has pointed out specific features of the claims not disclosed, suggested, or rendered obvious by the references applied in the Office Action. Accordingly, Applicant respectfully requests reconsideration and withdrawal of each of the objections and rejections, as well as an indication of the allowability of each of the pending claims.


Any changes to the claims in this amendment, which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

The Examiner is invited to contact the undersigned attorney at the telephone number listed below if such a call would in any way facilitate allowance of this application.

The Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

3-7-2008
Date



Jeffrey G. Toler, Reg. No. 38,342
Attorney for Applicant(s)
TOLER LAW GROUP
8500 Bluffstone Cove, Suite A201
Austin, Texas 78759
(512) 327-5515 (phone)
(512) 327-5575 (fax)